



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

March 24, 2008

Mr. Jeff Hodge, Registered Agent
HJH, LLC
369 Sanderson Street
Alcoa, Tennessee 37701

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 4957

Subject: DIRECTOR'S ORDER NO. WPC08-0039
BROOKSHIRE SUBDIVISION
BLOUNT COUNTY, TENNESSEE

Dear Mr. Hodge:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Knoxville
DWPC – Compliance File
OGC

IN THE MATTER OF:)	
)	
)	
HJH, LLC)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
)	
RESPONDENT)	CASE NUMBER WPC08-0039
)	

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JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator, and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substances will move into waters of the state. Coverage under the Tennessee Construction General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP), and an appropriate fee.

VI.

Pursuant to T.C.A. §69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a §401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

Pistol Creek and its associated wetland are “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, livestock watering and wildlife, and irrigation. Additionally, Pistol Creek is listed as impaired for loss of biological integrity due to siltation, and *Escherichia coli* due to discharges from municipal separate storm sewer systems (MS4).

FACTS

VIII.

On August 8, 2005, the original owner of the site requested coverage under the TNCCGP for 2.5 acres of land disturbance which was issued on August 12, 2005. The original owner also

requested ARAP authorization for the installation of a single gravity sewer line that would cross Pistol Creek and its associated wetland. Authorization was issued under a General Permit for Minor Alterations to Wetlands on September 21, 2005, which expires on September 21, 2007.

IX.

On November 11, 2006, the Respondent submitted a NOI for construction activities at the site requesting transference of the existing TNCGP coverage. The Respondent's request was approved on November 28, 2006.

X.

On November 30, 2006, the City of Maryville Engineering and Public Works Department (CMEPW) conducted a complaint investigation regarding blasting activities occurring along Pistol Creek. The CMEPW stormwater engineer noted that a contractor had used dynamite to clear out rock along a sanitary sewer line installation across Pistol Creek and its associated wetland. This activity resulted in degradation to the stream banks and sediment loss to Pistol Creek.

After the inspection, the CMEPW engineer contacted the Knoxville Environmental Field Office (K-EFO) for a consultation regarding his findings. The CMEPW engineer met division personnel at the site and observed that EPSC measures had not been installed, the stream banks had been disturbed, and sediment had migrated into Pistol Creek, resulting in a condition of pollution. It was also noted that an unstable, temporary road crossing consisting of sediment and unclean rock had been constructed in Pistol Creek without ARAP authorization.

XI.

On January 8, 2007, the CMEPW engineer met with the Respondent at the site and noted that additional sand bags had been placed along the disturbed stream banks to prevent further sediment loss to the creek until permanent vegetation could be established. The Respondent was advised to consult with the K-EFO for further instruction on the installation of permanent vegetative requirements.

XII.

On January 16, 2007, the division conducted a follow-up site inspection and noted that portions of the stream channel had not been stabilized and that adequate EPSC measures had not been installed at the site. The division further documented that a portion of a previously disturbed stream bank had been altered by having rocks and sediment placed on approximately 75 feet of the bank, extending into the stream channel and restricting flow. Subsequently, the unstabilized, opposite bank eroded and additional sediment migrated into the creek, resulting in a condition of pollution.

XIII.

On February 13, 2007, a follow-up inspection and meeting were conducted at the site with city officials, the Respondent, and division personnel, to discuss the violations previously noted on November 30, 2006, and January 16, 2007. Division personnel observed that straw had been placed on most of the unstable, previously disturbed stream bank. Otherwise, conditions at the site had not changed since the November 30, 2006, and the January 16, 2007, site visits.

XIV.

On February 15, 2007, the division issued a NOV to the Respondent for violations noted during the November 30, 2006, January 16, and February 13, 2007, site inspections. The Respondent was instructed to install adequate EPSC measures to prevent further sediment loss to Pistol Creek, and provide a written proposal for full restoration of the stream banks, within 30 days of receipt of the NOV. Also, the Respondent was requested to attend a Compliance Review Meeting (CRM) at the K-EFO on February 27, 2007. A subsequent file review determined that the Respondent did not have ARAP authorization for the installation of a sewer line crossing to Pistol Creek.

XV.

On February 27, 2007, a CRM was held with the Respondent, the Respondent's representative, and division personnel to further discuss the violations cited in the February 15, 2007, NOV and the corrective measures the Respondent needed to implement to bring the site into compliance. Additionally, the Respondent was instructed to restore the stream banks to their original slope and contour, and to plant permanent vegetation.

XVI.

On July 11, 2007, division personnel conducted a follow-up site inspection to review the restoration of the stream bank. Division personnel noted that erosion preventive matting and permanent vegetation had been installed on the stream bank.

XVII.

On November 20, December 5, and December 11, 2007, division personnel conducted follow-up site inspections. On November 20, 2007, division personnel noted that EPSC measures at the site were inadequate and had not been maintained. Portions of the silt fencing along Pistol Creek had been overwhelmed and undercut, allowing sediment to migrate into the creek, resulting in a condition of pollution. Division personnel also documented an area of disturbance near the site entrance without any EPSC or stabilization measures installed. As a result, sediment had migrated into a concrete drainage swale and into the creek.

Division personnel also noted that several acres had been cleared and graded, and that the site appeared to have been inactive for a significant amount of time without temporary or permanent stabilization measures installed. According to the TNCGP, temporary or permanent soil stabilization at the construction site or a phase of the project must be completed not later than 15 days after the construction activity in that portion of the site has temporarily or permanently ceased. The Notice of Coverage (NOC) had not been posted on site, nor had the SWPPP been available for review.

On the December 5, 2007, follow-up site inspection, division personnel documented EPSC measures that had previously been installed adjacent to Pistol Creek continued to be overwhelmed and undercut, allowing sediment to continue to migrate into the creek, resulting in a condition of pollution. The site continued to have multiple, inactive areas that had been cleared and graded without temporary or permanent stabilization measures installed. The area of disturbance near the site entrance, noted on the November 20, 2007 site inspection, had not changed. The NOC had not been posted on site, nor had the SWPPP been available for review.

On the December 11, 2007, follow-up site inspection, division personnel noted EPSC measures continued to be inadequate. Portions of the silt fencing along Pistol Creek remain overwhelmed allowing sediment to continue to migrate into the creek, resulting in a condition of pollution. The Notice of Coverage (NOC) had not been posted on site, nor had the SWPPP been available for review.

XVIII.

On December 13, 2007, division personnel issued a NOV as a result of violations observed during the November 20, December 5, and December 11, 2007, follow-up site inspections. The Respondent was again instructed to install adequate EPSC measures to prevent further sediment loss to Pistol Creek, and submit a stream restoration plan for sediment removal from the impacted portions of Pistol Creek with 14 days of receipt of the NOV.

Division personnel conducted a file review and determined that the Respondent had only been issued coverage for 2.5 acres of road disturbance. Based upon division personnel's field observations, the Respondent had disturbed approximately 13-15 acres of land without appropriate permit coverage.

XIX.

On January 24, 2008, division personnel conducted a follow-up site inspection and noted conditions at the site had improved, but the installed control measures continued to be inadequate. The only EPSC measures the Respondent had implemented consisted of the installation of silt fencing that had not been entrenched and the application of seed and straw to a few minor areas. The NOC had not been posted on site, nor had the SWPPP been available for review. To date, the Respondent has not submitted the Stream Restoration Plan for Sediment

Removal from Pistol Creek that the division requested in the NOV issued on December 13, 2007.

XX.

During the course of conducting this investigation, the division incurred damages in the amount of SEVEN HUNDRED SIXTY DOLLARS AND FORTY THREE CENTS (\$760.43).

VIOLATIONS

XXI.

By failing to comply with the terms and conditions of the TNCGP, and by altering waters of the state without authorization under an ARAP, as described herein, the Respondent has violated T.C.A. Sections §69-3-108(b) and 69-3-114(b):

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXII.

By causing a condition of pollution to Pistol Creek, the Respondent has violated T.C.A.

§69-3-114(a):

§69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XXIII.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent.

1. The Respondent shall, within 14 days of receipt of this Order and Assessment, establish effective EPSC measures on-site, such that no additional sediment is allowed to enter waters of the state or flow off site.

2. The Respondent shall, within 30 days of receipt of this Order and Assessment, submit written documentation and photographic evidence indicating that appropriate EPSC measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager at the K-EFO at 3711 Middlebrook Pike, Knoxville, Tennessee 37921.
3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondent shall, within 30 days of receipt of this Order and Assessment, submit for review and division approval, a Corrective Action Plan (CAP) for the restoration of the impacted segments of Pistol Creek, including sediment and rock removal, and stabilization of the banks with riparian vegetation. This CAP shall include, but not be limited to, techniques and activities to be utilized during removal and restoration activities, EPSC measures to be implemented during removal and restoration activities, and a time schedule for the proposed activities. Be advised that in-stream sediment removal activities should be conducted with hand tools in an attempt to minimize additional disturbance. The written approval of the CAP by the division will constitute authorization for the activities described in the approved plan, and no additional ARAP coverage is required. The CAP shall be submitted to the Division of Water Pollution Control Manager at the K-EFO. Any deficiencies to the CAP shall be corrected by the Respondent within 30 days of notification of those deficiencies and the revised CAP shall be resubmitted to the Water Pollution Control Manager at the K-EFO to the address listed in item 2, above.

5. The Respondent shall, within 30 days of division approval, complete the activities outlined in the approved CAP and submit notification of completion to the Water Pollution Control Manager at the K-EFO to the address listed in item 2, above.
6. The Respondent shall, within six months of receipt of this Order and Assessment, provide documentation of attendance and successful completion of the Department's EPSC Workshop for all employees who manage or oversee construction projects to the Water Pollution Control Manager at the K-EFO to the address shown in item 2, above. Information may be found on the program website at <http://www.tnepsc.org>.
7. The Respondent shall pay a CIVIL PENALTY of SIXTY FIVE THOUSAND DOLLARS (\$65,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of SIXTEEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$16,250.00).
 - b. If the Respondent fails to comply with Part XXIII, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XXIII, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125.00), payable within 30 days of default.
 - d. If the Respondent fails to comply with Part XXIII, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND

ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125.00), payable within 30 days of default.

- e. If the Respondent fails to comply with Part XXIII, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125.00), payable within 30 days of default.
 - f. If the Respondent fails to comply with Part XXIII, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125.00), payable within 30 days of default.
 - g. If the Respondent fails to comply with Part XXIII, item 6 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of EIGHT THOUSAND ONE HUNDRED TWENTY FIVE DOLLARS (\$8,125.00), payable within 30 days of default.
8. The Respondent shall pay DAMAGES to the division in the amount of SEVEN HUNDRED AND SIXTY DOLLARS AND FORTY THREE CENTS (\$760.43) payable within THIRTY (30) DAYS of receipt of this Order and Assessment.

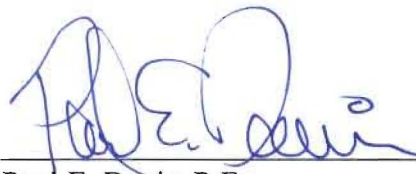
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request

must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 24th day of March 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of

Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.